

UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF INDIANA
 INDIANAPOLIS DIVISION

IN RE:)
)
 ITT EDUCATIONAL SERVICES, INC., *et al.*¹) Case No. 16-07207-JMC-7A
)
 Debtors.) Jointly Administered

**COVER SHEET TO THIRD INTERIM
 APPLICATION OF ROBINS KAPLAN LLP FOR REIMBURSEMENT
 OF EXPENSES INCURRED AS LITIGATION CO-COUNSEL FOR THE
 TRUSTEE FOR THE PERIOD DECEMBER 1, 2017 THROUGH JANUARY 31, 2021**

Name of Applicant: Robins Kaplan LLP (“Robins Kaplan”)
 Authorized to Provide Professional Services to: Deborah J. Caruso, the trustee appointed in
 the above-captioned chapter 7 cases (the
 “Trustee”)
 Date of Order Authorizing Employment: Order entered February 24, 2017 [Doc 1313]
nunc pro tunc to February 8, 2017
 Period for Which Compensation is Sought: December 1, 2017 through January 31, 2021
 (the “Current Reimbursement Period”)
 Amount of Fees Sought: \$0.00
 Amount of Expense Reimbursement Sought: \$476,001.57

This is a(n) _____ Monthly X Interim _____ Final Fee Application

This is Robins Kaplan’s third interim application for reimbursement of expenses.

Blended Rate in this Application for All Attorneys:	N/A
Blended Rate in this Application for All Timekeepers:	N/A
Total Expense Reimbursement Sought Pursuant to Employment Order:	\$476,001.57
Expenses Submitted to and paid by Trustee pursuant to Employment Order (“80% Reimbursement”) but not yet approved:	\$71,659.25
Number of Professionals Included in this Application:	N/A
Number of Professionals Billing Fewer than 15 Hours to the Case During this Application Period:	N/A

¹ The debtors in these cases, along with the last four digits of their respective federal tax identification numbers are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980].

Dated: February 25, 2021
Indianapolis, Indiana

/s/ Ronald James Schutz

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IN RE:)
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ITT EDUCATIONAL SERVICES, INC., *et al.*¹) Case No. 16-07207-JMC-7A
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**THIRD INTERIM APPLICATION
OF ROBINS KAPLAN LLP FOR REIMBURSEMENT OF
EXPENSES INCURRED AS LITIGATION CO-COUNSEL FOR THE
TRUSTEE FOR THE PERIOD DECEMBER 1, 2017 THROUGH JANUARY 31, 2021**

Robins Kaplan (“Robins Kaplan”), litigation co-counsel to Deborah J. Caruso, the chapter 7 trustee in this case (the “Trustee”), with respect to the D&O claims that the Affiliated Debtors’ bankruptcy estates may hold against the former directors and officers (the “D&O Claims”), hereby submits this third interim application for reimbursement of expenses, pursuant to 11 U.S.C. §§ 330 and 331 and Rule 2016 of the Federal Rules of Bankruptcy Procedure, for reimbursement of its actual and necessary expenses in the amount of \$476,001.57 incurred from December 1, 2017 through January 31, 2021 (the “Current Reimbursement Period”),² on the following grounds:

I. JURISDICTION

1. The Court has jurisdiction over this application pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The debtors in these cases, along with the last four digits of their respective federal tax identification numbers are ITT Educational Services, Inc. [1311]; ESI Service Corp. [2117]; and Daniel Webster College, Inc. [5980].

² The requested expense reimbursement of \$476,001.57 includes \$17,407.44 in expenses incurred prior to the Current Reimbursement Period that were not processed at the time of Robins Kaplan’s second interim application.

3. The statutory predicates for relief are sections 330 and 331 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rule 2016 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

II. BACKGROUND

4. On September 16, 2016 (the “Petition Date”), ITT Educational Services, Inc. (“ITT”), ESI Service Corp. (“ESI”) and Daniel Webster College, Inc. (“Webster College,” and together with ITT and ESI, the “Affiliated Debtors”) filed voluntary petitions for relief under chapter 7 of the Bankruptcy Code. The Trustee was appointed interim trustee under section 701 of the Bankruptcy Code in each of the Affiliated Debtors’ bankruptcy cases on the Petition Date, and in accordance with section 702(d) of the Bankruptcy Code, became the permanent case trustee on November 1, 2016 following the conclusion of the meeting of creditors held pursuant to section 341(a) of the Bankruptcy Code.

5. On October 4, 2016, the Court entered its *Order Granting Motion for Joint Administration of Chapter 7 Cases* [Docs 221 & 222], directing the Affiliated Debtors’ bankruptcy cases to be jointly administered for procedural purposes only.

6. On February 24, 2017, the Court entered its *Order Granting Trustee’s Application to Employ Robins Kaplan LLP as Litigation Co-Counsel to the Trustee on a Contingency Fee Basis Effective Nunc Pro Tunc as of February 8, 2017* (the “Employment Order”) [Doc 1313], authorizing the employment of Robins Kaplan to investigate and pursue the Affiliated Debtors’ bankruptcy estates’ potential D&O Claims on a fully contingent fee basis. The amount of the contingent fee depends on the amount of Gross Proceeds and the stage at which when such claims are resolved. To clarify, Robins Kaplan does not seek the allowance of any compensation in this interim reimbursement application.

7. Pursuant to the Employment Order, Robins Kaplan was entitled to submit to the Trustee invoices for reimbursement of expenses up to an initial cap of \$500,000. The Employment Order authorizes the Trustee to pay eighty percent (80.0%) of actual expenses incurred by Robins Kaplan, with the remaining twenty percent (20.0%) to be paid after review and allowance by the Court.

8. Pursuant to the *Order Granting First Interim Application of Robins Kaplan LLP for Reimbursement of Expenses Incurred as Litigation Co-Counsel for the Trustee for the Period of February 8, 2017 through July 31, 2017* (the “1st Interim Expense Order”) [Doc 2099], the Court approved reimbursement of expenses to Robins Kaplan in the amount of \$91,777.01³ and authorized the Trustee to pay Robins Kaplan the twenty percent (20.0%) of expenses held back during the time period of February 8, 2017 through July 31, 2017 in the amount of \$18,355.40. Accordingly, for the time period of February 8, 2017 through July 31, 2017, the Trustee paid Robins Kaplan a total of \$91,777.01 in reimbursement of expenses.

9. Pursuant to the *Order Granting Second Interim Application of Robins Kaplan LLP for Reimbursement of Expenses Incurred as Litigation Co-Counsel for the Trustee for the Period of August 1, 2017 through November 30, 2017* (the “2nd Interim Expense Order”) [Doc 2379], the Court approved reimbursement of expenses to Robins Kaplan in the amount of \$273,303.97⁴ and authorized the Trustee to pay Robins Kaplan the twenty percent (20.0%) of expenses held back during the time period of August 1, 2017 through November 30, 2017 in the amount of \$54,660.79. Accordingly, for the time period of August 1, 2017 through November 30, 2017, the Trustee paid Robins Kaplan a total of \$273,303.97 in reimbursement of expenses.

³ Pursuant to the Employment Order, the Trustee previously paid eighty percent (80.0%) of the expenses in the amount of \$73,421.61.

⁴ Pursuant to the Employment Order, the Trustee previously paid eighty percent (80.0%) of the expenses in the amount of \$218,643.18.

Summary of Expenses for Current Reimbursement Period

10. Following November 30, 2017, Robins Kaplan submitted additional invoices to the Trustee for December 2017, January 2018, June 2019 and July 2019 (the “Previously Submitted Invoices”). Pursuant to the Employment Order, the Trustee paid eighty percent (80.0%) of the Previously Submitted Invoices. A summary of the Previously Submitted Invoices is as follows:

Reimbursement Period	Total Expenses	80% of Expenses Already Paid	20% of Expenses to be Paid
12/1/2017 to 12/31/2017	\$29,689.93	\$23,751.94	\$5,937.99
1/1/2018 to 1/31/2018	\$27,622.85	\$22,098.28	\$5,524.57
6/1/2019 to 6/30/2019	\$22,054.08	\$17,643.26	\$4,410.82
7/1/2019 to 7/31/2019	\$10,207.20	\$8,165.76	\$2,041.44
Totals:	\$89,574.06	\$71,659.24	\$17,914.81

Copies of the Previously Submitted Invoices are attached and incorporated as Exhibit 1. There remains an unpaid balance of \$17,914.81 for the twenty percent (20.0%) holdback on the Previously Submitted Invoices (the “Previously Submitted Invoices Holdback”).

11. In addition, Robins Kaplan recently submitted an additional invoice covering the time period of December 2017 through January 31, 2021 for expenses not previously billed in the total amount of \$386,427.51 (the “Recent Invoice”).⁵ The Recent Invoice is attached and incorporated as Exhibit 2. The Trustee has not paid any amounts owed pursuant to the Recent Invoice.

12. Accordingly, for the time period of February 8, 2017 through January 31, 2021, Robins Kaplan has incurred a total of \$841,082.55 in expenses and has been reimbursed a total of \$436,740.22, resulting in an unpaid balance of \$404,342.33.

⁵ The Recent Invoice does include time period covering the Previously Submitted Invoices, but these are expenses that were not included in the Previously Submitted Invoices. In addition, the Recent Invoice includes \$17,407.44 in expenses incurred prior to the Current Reimbursement Period that were not processed at the time of Robins Kaplan’s second interim application.

13. All expenses incurred during the Current Reimbursement Period are detailed in Exhibits 1 and 2. All expense entries include an itemization of the expenses by category, the date the expense was incurred, and the amount of the expense. The requested expenses are the kind customarily charged by Robins Kaplan for similar items in other similar matters. Below is a summary of the expenses incurred by category:

Expense Category	Amount
Copy and Supplies Expenses	\$7,699.03
Travel Expenses	\$46.20
Meals	\$668.62
Telephone	\$46.40
Delivery and Messenger Services including service of process fees	\$3,604.66
Online Research	\$4,767.42
E-Discovery Expenses (including data hosting and project review attorneys)	\$408,163.90
Filing Fees	\$500.00
Deposition Costs	\$27,398.65
Experts	\$23,106.69
Total	\$476,001.57

Summary of Services Rendered by Robins Kaplan During Current Reimbursement Period

14. During the Current Reimbursement Period, Robins Kaplan actively investigated and pursued the D&O Claims. A summary of the work done by Robins Kaplan includes the following:

- (a) **Motion to Dismiss:** The defendants filed two motions to dismiss the complaint. One motion was filed by the former director defendants (John E. Dean, C. David Brown, II, Joanna T. Lau, Thomas I. Morgan, John Vincent Weber, John F. Cozzi, Samuel L. Odle, and Jerry M. Cohen) and the other motion was filed by Defendant Kevin Modany. Robins Kaplan opposed both of those motions to dismiss which included researching and filing.
- (b) **Mediation:** In August 2020, the parties scheduled a mediation. Counsel prepared a thorough mediation statement with exhibits, outlining their case and detailing their arguments, in preparation for the mediation. The parties spent a full day at a remote mediation, and engaged in conversations with the mediator and opposing counsel in preparation.

(c) **Depositions:** Between November 2020 and January 2021, Robins Kaplan took and defended several depositions which required significant preparation. Specifically, the parties took a total of 15 depositions, with 14 deponents, of the following people: Michael Goldstein, Jay Vaughan, Blain Butner, Thomas Snyder, Deborah Caruso, C. David Brown, Damien Zoubek, Ron Holt, John Dean, Sam Odle, Thomas Morgan, Jerry Cohen, Eugene Feichtner, and John Cozzi.

(d) **E-Discovery Expenses:** Robins Kaplan collected and produced a significant number of documents in this case, including from several third parties, which counsel was required to subpoena. In total, Robins Kaplan collected nearly 3,000,000 documents and had to produce more than 500,000 documents. Defendant also produced more than 20,000 documents. Robins Kaplan hosted all of these documents on its internal data hosting and document review platform so that they could be reviewed by document review attorneys and then used by the Robins Kaplan litigation team. A document collection and review of this many documents is a large undertaking. But Robins Kaplan minimized the costs associated with such a large review by utilizing its “project review” attorneys who are billed at low rates and are similar to “contract attorney” rates at data hosting and contract attorney vendors. Robins Kaplan also utilized project managers to use technology associated with its review platform to streamline the document review process and manage the large amount of documents more efficiently. Additionally, as part of the parties’ discovery, Robins Kaplan engaged with Defendant’s counsel on several occasions to meet and confer regarding document requests and to negotiate search terms and other parameters. This also helped streamline the document review process and minimized expenses associated with document review. All of these mechanisms allowed Robins Kaplan to then meet the Trustee’s discovery obligations and utilize the documents to support the Trustee’s case.

Additionally, Defendant served several discovery requests which required the Trustee to search for additional documents and use documents to respond to Defendant’s requests. Robins Kaplan responded to close to a hundred document requests and several interrogatories.

Finally, Robins Kaplan has hosted these documents throughout the case (and will continue to do so through trial). Robins Kaplan’s monthly data hosting fee is charged to the Trustee at a rate that is significantly discounted than what would typically be charged by a third party hosting vendor. And Robins Kaplan agreed to cap the hosting expenses at \$10,000 per month which is significantly lower than what would be charged for the current 5,275 gigabytes of data currently being hosted (which would cost approximately \$40,000 to \$50,000 at industry rates if it wasn’t capped).

(e) **Experts:** Robins Kaplan retained three experts, each to opine on different issues in the case. On February 22, 2021, Robins Kaplan served its expert reports on Defendant Kevin Modany. The expert reports, in total, exceeded 250 pages.

15. Exhibits 1 and 2 include the time records for the project review attorneys, including a description of the services performed and the hours spent totaling 1,635.3 hours.

III. RELIEF REQUESTED

16. By this application, Robins Kaplan requests entry of an order (a) allowing and approving reimbursement of actual and necessary expenses incurred during the Current Reimbursement Period in the amount of \$476,001.57, (b) authorizing the Trustee to pay the Previously Submitted Invoices Holdback in the amount of \$17,914.81, and (c) authorizing the Trustee to pay the Recent Invoice in the amount of \$386,427.51.

IV. GROUNDS FOR GRANTING RELIEF REQUESTED

17. Section 331 of the Bankruptcy Code provides for interim compensation of professionals and incorporates the substantive standards of section 330 of the Bankruptcy Code that govern the Court's award of such compensation. *See* 11 U.S.C. § 331. Section 330 of the Bankruptcy Code provides that a court may award a professional employed under section 327 of the Bankruptcy Code "reasonable compensation for actual, necessary services rendered . . . and reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1)(A)-(B).

18. Robins Kaplan has reviewed the requirements of section 330 of the Bankruptcy Code and believes that this application is in compliance with such requirements, as applicable.

19. All expenses for which Robins Kaplan seeks reimbursement, were incurred on behalf of the Trustee and were necessary and beneficial to the Trustee and the Affiliated Debtors' bankruptcy estates. There is no agreement or understanding between Robins Kaplan

and any other person, other than members of the firm, for sharing of reimbursement of expenses received for services rendered in this case.

20. To the extent expenses incurred relate to the Current Reimbursement Period but were not processed prior to the preparation of this application or Robins Kaplan has for any other reason not yet sought reimbursement of expenses herein with respect to any expenses incurred during the Current Reimbursement Period, Robins Kaplan reserves the right to request reimbursement of such expenses in a future application.

V. NOTICE

21. Pursuant to the *Notice, Case Management and Administrative Procedures* (the “Case Management Procedures”) approved by the Court on October 4, 2016 [Doc 220], the Trustee will serve a copy of this application and all exhibits on the following (as defined in the Case Management Procedures): (a) the Core Group; (b) the Request for Notice List; and (c) the Appearance List.

NOTICE IS GIVEN, that pursuant to the Case Management Procedures, any objection to this application must be in writing and filed with the Bankruptcy Clerk by no later than **4:00 p.m.** on **March 10, 2021**. Pursuant to General Order 20-0012,⁶ those not required or not permitted to file electronically must deliver any objection as follows: (a) by U.S. Mail at Clerk, United States Bankruptcy Court, Re: *ITT Educational Services, Inc. et al.*, 116 U.S. Courthouse, 46 East Ohio Street, Indianapolis, IN 46204; (b) by publicly accessible drop box available at the Indianapolis Division located at the New York Street and Pennsylvania Street entrance; or (c) by e-mail to bankruptcy@insb.uscourts.gov. In addition, pursuant to General Order 20-0012 any objection to this application shall be: (a) signed by the filer and contain the filer’s current email address and telephone number; and (b) tendered by only one of the methods describe above. **Please note that objections submitted by e-mail must be in non-editable Portable Document Format (PDF) and each document submitted by e-mail for filing must be in a separate PDF.**

The objecting party must also serve a copy of the written objection upon the Trustee’s counsel, at Counsel for Trustee Deborah J. Caruso, Rubin & Levin, P.C., 135 N. Pennsylvania Street, Suite 1400, Indianapolis, IN 46204 (mtheisen@rubin-levin.net). **If an objection is NOT timely filed, the requested relief may be granted without a hearing.**

⁶ The filing procedures for parties not represented by an attorney as set forth in S.D. Ind. B-5005-4, have been temporarily amended pursuant to General Order 20-0012 in response to Coronavirus Disease (COVID-19).

NOTICE IS FURTHER GIVEN that in the event of an objection to this application is timely filed, a telephonic hearing on this application and such objection will be conducted on March 17, 2021 at 1:30 p.m. (prevailing Eastern time). Interested parties may participate at the hearing by conference call by calling 1-888-273-3658, passcode 6349352#.

WHEREFORE, Robins Kaplan respectfully requests the Court enter an order: (i) allowing and approving reimbursement of actual and necessary expenses incurred during the Current Reimbursement Period in the amount of \$476,001.57; (ii) authorizing the Trustee to pay the Previously Submitted Invoices Holdback in the amount of \$17,914.81; (iii) authorizing the Trustee to pay the Recent Invoice in the amount of \$386,427.51; (iv) allowing and approving such reimbursement of actual and necessary out-of-pocket expenses incurred without prejudice to Robins Kaplan's right to seek additional expenses incurred during the Current Reimbursement Period, which were not processed at the time of this application; and (v) granting Robins Kaplan all other just and proper relief.

Dated: February 25, 2021
Indianapolis, Indiana

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CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2021, a copy of the foregoing *Third Interim Application of Robins Kaplan LLP for Reimbursement of Expenses Incurred as Litigation Co-Counsel for the Trustee for the Period December 1, 2017 through January 31, 2021* was filed electronically. Pursuant to Section IV.C.3(a) of the Case Management Procedures, notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

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I further certify that on February 25, 2021, pursuant to Section IV.C.3(c) of the Case Management Procedures, a copy of the foregoing *Third Interim Application of Robins Kaplan LLP for Reimbursement of Expenses Incurred as Litigation Co-Counsel for the Trustee for the Period December 1, 2017 through January 31, 2021* was emailed to the following:

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/s/ Meredith R. Theisen

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